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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION
Case #: MPA - 173924

PRELIMINARY RECITALS

On April 25, 2016, the above petitioner filed a hearing request under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to challenge a decision by the Division of Health Care Access and Accountability (the agency) regarding Medical Assistance (MA). The hearing was held on June 16, 2016, by telephone.

The issue for determination is whether the agency correctly denied the personal care worker (PCW) hours for petitioner pursuant to her prior authorization (PA) request.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: written submittal of [REDACTED] Nurse Consultant
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County. She is 69 and her diagnoses include weakness/fatigue, Vitamin D deficiency, depression and prediabetes.
2. On January 29, 2016 the petitioner's PCW provider, [REDACTED], submitted a PA for petitioner to receive PCW services in the amount of 27 hours per week, and 24 hours per year of Pro Re Nata (PRN).to start February 7, 2016. The PA was returned to the provider requesting additional information and clarification.
3. On March 18, 2016 the agency issued a notice of denial for the PCW services because the PCW services were not shown to be medically necessary.

DISCUSSION

MA coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. Covered services are specified in subsection (1), and are defined generally as "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community." Examples of covered services are assistance with bathing, with getting in and out of bed, with mobility and ambulating, with dressing and undressing, and meal preparation. In determining the number of PCW hours to authorize the OIG uses that standard along with the general medical necessity standard found at Wis. Adm. Code, §DHS 101.03(96m). It provides:

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, §DHS 101.03(96m).

The agency denied the PA in this case for a couple of reasons. First, it determined that the documentation submitted with it did not support the medical necessity of the hours requested because it did not show what functional limitations petitioner has that require the PCW assistance and for which activities of daily

living require assistance. While there seems no dispute that petitioner has weakness, the PA does not show what her deficits are with respect to her upper extremities, range of motion, strength or mobility. Her past clinical notes do not provide this information. The medical information submitted does not show petitioner having the limitations identified during the Personal Care Screening Tool process. Rather, the last clinical note states, “Nothing here to explain her fatigue. My suspicion is that this is due to a combination of poor sleep hygiene, depression that is under-treated and also to her age and relative inactivity. She should remain on Vit D supplement and recheck Vit D in 3 months. Recommend low impact exercise such as walking 30 minutes daily. Consider changing medication for sleep to insure [sic] night’s rest. Also consider something for her mood. She can discuss with her PMD [REDACTED]” In reviewing the information submitted by the provider, I can therefore see how the agency was unable to determine that the PCW services were medically necessary.

Thus, the problem relates to the fact that the medical necessity for those cares is not documented pursuant to MA rules and policy, which provide:

(3) OTHER LIMITATIONS.

(a) Personal care services shall be performed under the supervision of a registered nurse by a personal care worker who meets the requirements of s. DHS [105.17 \(3\)](#) and who is employed by or is under contract to a provider certified under s. [DHS 105.17](#).

(b) Services shall be performed according to a written plan of care for the recipient developed by a registered nurse for purposes of providing necessary and appropriate services, allowing appropriate assignment of a personal care worker and setting standards for personal care activities, giving full consideration to the recipient's preferences for service arrangements and choice of personal care workers. The plan shall be based on the registered nurse's visit to the recipient's home and shall include:

1. Review and interpretation of the physician's orders;
2. Frequency and anticipated duration of service;
3. Evaluation of the recipient's needs and preferences; and
4. Assessment of the recipient's social and physical environment, including family involvement, living conditions, the recipient's level of functioning and any pertinent cultural factors such as language.

(c) Review of the plan of care, evaluation of the recipient's condition and supervisory review of the personal care worker shall be made by a registered nurse at least every 60 days. The review shall include a visit to the recipient's home, review of the personal care worker's daily written record and discussion with the physician of any necessary changes in the plan of care.

See Wis. Adm. Code §DHS 107.112(3)(a)-(c)(emphasis added).

The MA providers are also made aware of the formatting requirements in the MA Handbook for personal care PAs:

Personal Care Services

As specified in [DHS 107.112](#), Wis. Admin. Code, covered personal care services are medically-oriented activities related to assisting a member with ADL necessary to maintain the member in his or her place of residence in the community.

Personal care services are covered when provided by a Medicaid-enrolled personal care provider to a member enrolled in BadgerCare Plus or Medicaid according to policies and procedures.

Covered services are required to have written orders of a physician and a written POC. All covered personal care services provided must be supervised by a RN supervisor. The

services must be medically necessary and be provided by individuals who are trained in a manner that is in compliance with licensing and certification requirements.

Providers are reminded that all nursing acts delegated to a PCW by a RN must be documented in the physician orders. If the PCW is to provide MOTs, then orders for nursing acts delegated to the PCW need to clearly spell out the delegated nursing acts to be provided.

Written orders examples:

Example 1

PCW: Up to 4 hrs/day, 7 days/week for assistance with bathing, dressing and undressing, grooming, toileting, incontinence cares PRN, applying orthotics daily, suprapubic catheter cares BID, assist with changing suprapubic catheter every two weeks and PRN, and services incidental to ADL and MOTs (including laundry, grocery shopping, and meal preparation).

Example 2

PCW: 2 hrs/day, 6 days/week for assistance with bathing, grooming, dressing, and glucometer checks daily (call RN supervisor if blood glucose <70 or >200).

See Attachment 4 of OIG's July 28, 2015 letter, also available online at <https://www.forwardhealth.wi.gov/WIportal/Online%20Handbooks/Display/tabid/152/Default.aspx?ia=1&p=1&sa=47&s=2&c=61>.

The petitioner was at the hearing and her representatives testified to her limitations due to weakness. They stated she has been taking sleeping pills for 20 years, but she still has poor sleep. They also testified that she has periodic visits for treatment of her depression. The problem is this affirms the last clinical note cited above.

The PA fails to show through her medical documentation that her limitations require PCW services. And while I do not doubt petitioner has limitations, they must be identified and verified so that petitioner's condition is clear to the agency and based on the orders of her physician as required under MA rules. I therefore must conclude that the agency was correct in its denial of the PA request. As in all PAs, the petitioner bears the burden of proving the services she requests are necessary, and that has not been done. Her PCW provider may be able to file an amendment to the PA request correcting the problems and explaining more fully the need for the hours. I suggest that the petitioner, her PCW provider, and the medical specialists she sees review her PCW needs and that they provide increased documentation to support a new request for PCW time. She may also contact her county's Aging and Disability Resource Center (ADRC) to explore alternative home care options such as supportive home care services. This is not intended to diminish the challenges petitioner faces, but rather to explain that the documentation must be there to support the requested services.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The agency correctly denied the PCW hours for petitioner pursuant to her PA request.

THEREFORE, it is

ORDERED

That the petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

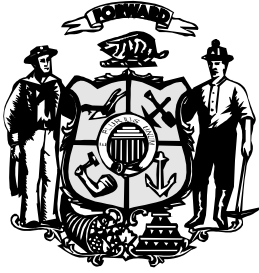
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this _____ day of July, 2016

\s _____
Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 15, 2016.

Division of Health Care Access and Accountability